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IB Docket No. 95-41

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SUMMARY

The Commission has identified several benefits that will result from the elimination of the market restrictions currently imposed on U.S. domestic satellite operators and U.S. licensed separate international satellite systems. Home Box Office ("HBO") generally supports the Commission's goals of increased competition for domestic and international satellite services and the recognition that satellite users have legitimate needs for satellite operators that can provide both domestic and international services without wasteful duplication.

In pursuit of these benefits, however, the Commission should be mindful of certain potential adverse consequences that could result from the implementation of its proposed deregulatory initiatives. The Commission should take steps to ensure that these consequences do not occur.

Specifically, the Commission should make certain that the prime domestic orbital positions are devoted first and foremost to their primary purpose -- the provision of domestic satellite communications. The Commission should implement safeguards to ensure that domestic services are not sacrificed by desires of satellite operators (foreign and domestic) to use prime U.S. orbital positions for international services.

Second, the Commission should be alert to a possible rush by domestic and foreign entities to launch satellites into positions that could provide services throughout North and South America. All entities should be put on notice that full and complete inter-satellite coordination pursuant to ITU regulations is necessary

and no one should be permitted to launch uncoordinated satellites that could interfere with existing operators and users.

Third, the Commission should preserve the integrity of its 2° spacing and other satellite technical requirements. Thousands of earth stations providing a wide variety of services have been deployed based on the expectation of the continued viability of 2° spacing and similar interference limiting regulations. These expectations must be honored as the Commission moves to a more flexible regulatory system for domestic and international satellite operators.

The Commission's proposals for licensing of U.S. earth stations should be adopted, as well as its proposals regarding private transponder sales and the regulatory classification of satellite carriers.

HBO objects to the use of INTELSAT capacity for domestic purposes, at least as long as there remains a serious shortage of INTELSAT capacity for international television customers.

Finally, HBO observes that the extension of domestic satellite footprints into international territories may pose significant program piracy issues for companies such as HBO, which, because of program license restrictions, generally must limit the reception of their domestic programming services to individuals or entities within the United States. Domestic satellite services that technically provide broad coverage beyond U.S. borders may not be as attractive for use in transmitting such domestic programming services.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
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Amendment to the Commission's) IB Docket No. 95-41
Regulatory Policies Governing)
Domestic Fixed Satellites and)
Separate International)
Satellite Systems)

TO: The Commission

COMMENTS OF HOME BOX OFFICE

Home Box Office, a Division of Time Warner Entertainment Company, L.P. ("HBO"), by its attorneys, hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.¹

I. INTRODUCTION/BACKGROUND

HBO, both itself and through various joint ventures and partnerships, is a major user of domestic and international satellite capacity. HBO uses this capacity to distribute subscription video programming services to commercial establishments and directly to consumers.

In the United States, HBO uses C-band transponder capacity on the Galaxy V, Galaxy IR and Galaxy VII satellites, and has obtained capacity on the soon to be launched Galaxy IIIR

¹ FCC 95-146, released April 25, 1995.

satellite, to distribute multiple feeds of its HBO and Cinemax programming services to cable television systems, satellite master antenna systems, hotels, and other commercial establishments, and directly to consumers who own C-band television receive-only earth stations ("TVROs"). HBO also licenses its programming services for distribution over the medium power Ku-band satellite used by PRIMESTAR Partners L.P. and over the high power direct broadcast satellite system licensed to United States Satellite Broadcasting Company.

In South America, an HBO partnership distributes the HBO OLE service using the PAS-1 satellite operated by PanAmSat Licensee Corporation. Upon the successful launch of the PAS-3 satellite, the HBO OLE, Cinemax and related services will be distributed over that satellite as well.

In Asia, HBO Pacific Partners, C.V. currently distributes the HBO Asia service over the Palapa satellite system. HBO Pacific Partners also has capacity on the APSTAR-1 satellite owned by APT Satellite Co., Ltd. HBO also has obtained capacity on the PAS-4 Indian Ocean Satellite scheduled to be launched later this year by PanAmSat. HBO has interests in various programming services using several satellite systems covering Europe.

In addition to the satellite capacity employed by HBO for the distribution of its programming services, HBO also uses significant amounts of domestic and international occasional use satellite video capacity to transmit live events (sports, concerts, etc.) from remote sites to HBO's network origination

centers. This capacity is obtained by HBO from a broad range of domestic and international satellite carriers and resellers, including INTELSAT and separate international system operators.

Since HBO first began using satellites for its services in the mid-1970s, it has been a consistent advocate for the Commission's deregulatory and pro-competitive satellite policies. These policies have encouraged the development of a competitive satellite supply environment, offering users lower prices and expanded choices.

The policy changes proposed in the Notice are a continuation of the Commission's satellite deregulatory philosophy. The Notice's proposals to give U.S. licensed domestic satellites free rein to provide international services, and to permit U.S. licensed separate international systems to offer domestic services, in the long run should enhance the competitive environment for satellite services to the benefit of the users, and ultimately to consumers. For this reason, HBO agrees with the thrust of the Notice as described below.

HBO has some concerns, however, regarding the effects that the Commission's proposals may have on other important policies involving the efficient use of orbit and spectrum resources, the maintenance of an orderly satellite coordination process and the avoidance of interference to existing and planned satellite communications networks. Although HBO's concerns do not outweigh the benefits it perceives from the Commission's current proposals, HBO urges the Commission, as explained more fully below, to

implement the proposals in a way that will enable the Commission to address effectively any adverse consequences that might arise.

**II. THE COMMISSION SHOULD BE SENSITIVE TO POTENTIAL
ADVERSE CONSEQUENCES ARISING OUT OF THE PROPOSED
ELIMINATION OF THE TRANSBORDER POLICY AND THE
MODIFICATION OF THE SEPARATE SYSTEMS POLICY**

The thrust of the Commission's proposals is to eliminate the current policy restrictions that confine operators of U.S. domestic satellites primarily to domestic markets and operators of U.S. licensed international separate satellite systems primarily to international markets. The result of the proposed policy changes would be a "single regulatory scheme"² in which an operator of a U.S. licensed satellite system could use the system to provide both domestic and international services.

There are two important benefits that would flow from these proposals. First, competition would be enhanced in both the domestic and international arenas. Today, due to a number of mergers and acquisitions, there are only three facilities-based suppliers of domestic satellite capacity (AT&T Corp., GE American Communications, Inc. and Hughes Communications Galaxy, Inc.). Ten years ago, there were nine. HBO believes that a return to a more competitive environment for domestic services will be beneficial to satellite users. Moreover, opening the international satellite markets to further competition by three well-financed, domestic facilities-based entities will bring needed competition to INTELSAT and other suppliers.

² Notice at ¶ 21.

The proposed policy changes also will benefit users through improved efficiency. As the Commission recognizes, communications needs are becoming more global, and satellite users in particular should have the ability to use their satellite capacity to meet their communications needs throughout the footprint of the satellite, irrespective of whether the transmission is considered "domestic" or "international."³ The continuation of the artificial domestic/international distinction in today's environment adds unnecessary expense, regulatory confusion and operational complications. Thus, the Notice is a necessary "catch-up" mechanism to bring the Commission's regulations into sync with the realities of satellite technology and the emerging global marketplace.

Although there are benefits to be gained from eliminating the regulatory distinction between domestic and international satellite systems, there are several potential consequences that could have substantial negative implications for satellite users. HBO urges the Commission to be alert to these possible consequences and to be prepared to take firm action should they develop.

A. Orbital Slot Scarcity

The geostationary orbital arc suitable for fixed satellites to provide domestic services is not unlimited. With generally uniform 2° spacing, the arc extends from 64° W.L. to 105° W.L. in the east and from 121° W.L. to 135° W.L. (for Ku-band satellites)

³ Notice at ¶ 16.

and 143° W.L. (for C-band satellites) in the west.⁴ Only a limited number of these orbital positions are suitable for 50 state satellite coverage. Under current regulations, satellites operating in this arc must be used primarily for domestic services. Today, there are 31 satellites operating in the domestic arc, and if the applications currently pending in the fixed satellite processing round ultimately are launched, there will be few, if any unused domestic orbital positions.⁵

Although the proposals set forth in the Notice would increase the amount of satellite capacity that can serve both domestic and international points, it will not increase the supply of orbital locations. In fact, the Notice's proposals will increase demand for the existing limited orbital positions because those positions could be used to serve a much broader market for both domestic and international communications requirements.

If the limited numbers of prime domestic orbital positions are devoted more and more to international services, a shortage of orbital positions and satellite services available for domestic users could develop. This shortage could be magnified if the Commission permits foreign entities to launch satellites to serve

⁴ *Assignment of Orbital Locations to Space Stations in the Domestic Fixed Satellite Service*, 3 FCC Rcd 6972 (1988) ("1988 Assignment Order"). The portion of the arc from 105° W.L. to 121° W.L. is set aside for Canadian and Mexican satellites. Id. ¶ 6.

⁵ *FCC Public Notice*, Report No. DS-1487, released Dec. 9, 1994.

the U.S. domestic market.⁶ Should that occur, foreign entities may begin vying more aggressively for primary U.S. domestic orbital positions, again to the detriment of domestic users.

In adopting the proposals set forth in the Notice, the Commission should reaffirm that the U.S. domestic arc is to be used first and foremost to meet the needs of domestic communications users. The Commission should ensure that the orbital positions that are most capable of fulfilling U.S. domestic satellite communications needs are available to serve those needs in the event of a shortage of domestic capacity.

One method to ensure that domestic needs are given priority would be for the Commission to require U.S. licensed satellite operators using what traditionally have been domestic orbital positions to provide domestic service in lieu of international service if and when a shortage of domestic capacity develops. The Commission might also condition its approval of new satellite proposals to provide international services from the domestic arc on a showing that sufficient domestic capacity is available. Another method would be for the Commission to conduct periodic reviews of domestic capacity supply and demand and require adjustments to the domestic/international mix where necessary to provide for unmet domestic needs. Whatever method it chooses, the Commission should adhere to the fundamental principle that the

⁶ The Commission seeks comments on whether it should permit non-U.S. satellites to serve the U.S. domestic market. Notice at ¶ 39.

domestic arc is a resource to be devoted primarily to the fulfillment of domestic communications requirements.

B. Inter-Satellite Coordination

HBO also is concerned about a potential breakdown in the orderly process for international inter-satellite coordination if there develops a scramble for orbital locations to serve the expanded North America/South America market.⁷

As opposed to certain other parts of the world, coordination of satellites in Region II has been well managed. The U.S. government and other administrations with satellite interests in the region generally have worked together to coordinate their respective satellites and to avoid interference. Moreover, satellite operators generally have maintained their service areas in either the Northern or Southern hemisphere which makes sharing of orbital positions technically feasible.

The adoption of the proposals in the Notice should motivate satellite operators to design systems that will serve both North and South America, and the potential to serve such an expanded market could lead to a "land rush" mentality to launch satellites, even before coordination is completed. The authorization of

⁷ Recently, the Commission has been presented with a situation where a U.S. satellite operator, Hughes, has claimed that one of its assigned orbital positions (72° W.L. for SBS-6) has been claimed by Argentina. Despite the fact that the United States had not completed coordination of the Argentina satellite, Argentina nevertheless placed a satellite in the 72° W.L. position. According to Hughes, the follow-on satellite proposal by Argentina will present difficult coordination issues because of its extensive coverage of the U.S. mainland. *Hughes Communications Galaxy, Inc. Application for Orbital Reassignment of SBS-6, 40-SAT-ML-95, Declaration of Bernard F. Vecerek* filed Feb. 28, 1995.

foreign entities to serve the United States could amplify the problem.

HBO is very familiar with orbital slot coordination disputes and the unsettling effects such disputes can have on satellite users. HBO experienced just such a problem recently with respect to a lease of transponders on the APSTAR-1 satellite to serve Asia. APSTAR-1 was launched by its owner into an orbital position that was not coordinated. After several exchanges of inter country correspondence and threats of international retaliation,⁸ the owner of APSTAR-1 finally secured an orbital position from the Kingdom of Tonga, which itself had acquired several slots arguably for speculative purposes. These types of uncoordinated activities are very detrimental to satellite users. If a customer obtains capacity on a satellite, it needs to be assured that the satellite will be able to operate in an orbital position without interference from existing or newly launched satellites. The integrity of the international coordination process has provided this assurance with respect to Region II.

It is imperative that, in implementing the policies proposed in the Notice, the Commission ensure continued stability of orbital slot coordination process. Major users such as HBO, which use satellites to serve millions of consumers, cannot have their businesses jeopardized by threats of non-coordination that could lead to intolerable interference. Thus, the Commission should

⁸ Los Angeles Times, July 15, 1994, Section D (Business), P. 5; The Nikkei Weekly, August 8, 1994, Asia & Pacific Section, P. 20.

make clear that in pursuing the policies in the Notice, it will not countenance departures from careful inter-satellite coordination procedures and will vigorously contest through all appropriate channels any attempts by U.S. or foreign entities to short circuit the coordination procedures developed by the International Telecommunications Union ("ITU").

C. 2° Spacing

The Commission questions at Paragraph 34 of the Notice whether it should permit non-U.S. licensed satellites to serve the domestic market, and, if so, whether it should impose on the foreign entities 2° spacing and other technical requirements applicable to U.S. licensees. HBO submits that it should. Whoever wishes to use the orbital resources currently used by U.S. operators to serve U.S. domestic markets simply must comply with all satellite technical parameters mandated by the Commission's rules.

Two degree spacing is at the heart of the Commission's technical regulation of domestic satellites. After exhaustive proceedings in the 1980s, the Commission adopted 2° spacing as the appropriate balance between the need to increase the number of orbital positions and the need to preserve the integrity of existing and future satellite services employing reasonably sized ground station antennas. Through the 2° spacing decisions, the Commission fostered the development of a ground station structure that would deploy smaller and less expensive antennas.

Since 1983, operators and users have developed substantial businesses based on the ground structure permitted by 2° spacing,

and on the fundamental expectation that 2° spacing requirements and other rules regarding the technical operation of U.S. satellites, and the performance parameters of earth stations, would be maintained and enforced. While high power direct broadcast satellites ("DBS") recently have begun providing direct-to-home television service to consumers, there are millions of subscribers receiving programming directly through consumer satellite systems, and indirectly through thousands of satellite master antenna systems and cable television operators. Moreover, thousands of general businesses receive voice, data and video services through FSS earth station networks. All of these networks must operate in a 2° spacing environment. Any relaxation of these requirements as a result of the proposals in the Notice would do serious damage to these networks and destroy the expectations of technical integrity that the users have relied on for many years.

Accordingly, the Commission should make it clear that the 2° spacing policies are of paramount importance in implementing its proposed new regulatory scheme. Entities seeking authority to operate satellites under U.S. licenses, or entities seeking to coordinate through foreign countries to locate satellites in the U.S. orbital arc, should be required, through FCC or ITU coordination processes, to protect U.S. satellites and users to the same extent such satellites and users would be protected under 2° spacing and other provisions of the Commission's domestic satellite technical rules.

III. EARTH STATION LICENSING

HBO agrees with the Notice's proposal regarding the licensing of earth stations under the proposed single regulatory regime. Thus, earth stations licensed in the future for communication with "ALSAT" should be permitted to communicate with all U.S. licensed satellites for both domestic and international transmissions. Moreover, the Commission should establish a simple procedure for modifying existing earth station licenses to incorporate domestic and international transmissions to all U.S. licensed satellites. Where no frequency coordination issues are presented, the modification should be automatic. If frequency coordination is required, the modification should be made self executing if no oppositions are filed within thirty days after public notice of the filing of the appropriate coordination data.⁹

IV. OTHER ISSUES

A. Program Piracy

The Commission questions at paragraph 38 of the Notice whether it should apply its single regulatory classification to other geostationary satellite services, including direct broadcast satellites ("DBS"). HBO does not object to such an approach. However, the Commission should recognize that, because of program

⁹ This procedure is being followed in the registration of domestic C-band receive-only earth stations. FCC Rules require that a frequency coordination be prepared and filed with an application for registration of C-band earth stations. If no objection to the application is filed during the 30-day public notice period, the application is automatically granted. 47 C.F.R. § 25.131.

license restrictions, some programmers have little or no ability to serve foreign markets from their domestic satellites. Thus, in many respects a broadened international DBS footprint presents program rights and piracy issues that do not exist in the domestic marketplace -- and may have implications for programmers under the Commission's "Program Access" Rules.

Currently, HBO's motion picture licenses permit HBO to distribute its domestic services only in the United States. Through encryption, HBO generally is able to prevent unauthorized reception of its programming in the Canadian and Latin American "spill-over" territories covered by the footprint of HBO's satellites.

Despite the efforts of HBO and other programmers to police the situation, there is acknowledged to be a "grey market" of unknown proportions. This grey market has been created by individuals and companies purchasing satellite decoding equipment in the United States, transporting it to Canada or Latin America, and seeking authorization from HBO and other programmers by providing bogus addresses and billing instructions in the United States.

Today, this grey market is limited because the footprints of the satellites used by the major U.S. programmers do not extend far beyond the U.S. borders. If satellite systems incorporate broader footprints in response to the Notice, this grey market problem could be exacerbated. In addition, because the grey market potential would be larger, there would be increased efforts by pirates to breach the security systems used by the programmers.

Under these circumstances, programmers might be compelled to deny their services to distributors wishing to use satellites that have the potential to expand the scope of the grey market and piracy.¹⁰

B. Use of INTELSAT Satellites for Domestic Services

HBO objects to the use by Comsat of INTELSAT satellite facilities to provide U.S. domestic service beyond the limited types available today.¹¹ INTELSAT is the only satellite provider that can offer services between many parts of the world, and in HBO's experience, INTELSAT capacity, at least for television transmission services, often is in short supply. Given the increasing desire of consumers for immediate television access to global news and sports events, the availability of inter-country satellite transmission services will be of increasing concern.

Because of INTELSAT's unique role and its current capacity situation, HBO does not believe it would be in the public interest for scarce inter-country capacity to be diverted to domestic use. Unless Comsat can demonstrate that INTELSAT has excess capacity that could be used domestically without impairing INTELSAT's ability to serve the needs of television customers who wish to transmit programming between countries, INTELSAT should be

¹⁰ Under the "Program Access" rules adopted by the Commission under the 1992 Cable Act, vertically integrated programmers such as HBO are confined in their ability to deny access to their programming by multichannel program distributors. We assume that the potential expansion of the grey market described above could be a legitimate reason to refuse to permit a program service to be distributed via a particular satellite operator.

¹¹ The Commission has reached no tentative conclusion on this issue. Notice at ¶ 39.

required to devote its capacity to its primary international service.

C. Regulatory Classification

HBO concurs with the Commission's proposal to relieve U.S. licensed satellite operators of any obligation to provide satellite capacity on a common carrier basis.¹² The Commission's pro-competitive Transponder Sales¹³ policies have been highly successful. Today, most satellite transactions are provided on a private basis, and there has been absolutely no evidence to support a continuing requirement for satellite capacity to be provided on a common carrier basis.

V. CONCLUSION

In eliminating the regulatory restrictions on the services that may be offered by U.S. licensed domestic and international satellite operators, the Commission should ensure that U.S. orbital positions are used first and foremost to serve the needs of domestic communications users. Moreover, the Commission should take steps to guarantee the continued integrity of the inter-satellite coordination process and the enforcement of 2° spacing and other satellite technical rules. HBO supports the proposals in the Notice regarding the licensing of earth stations and the elimination of the requirement for some satellite capacity to be offered on a common carrier basis. HBO objects to permitting

¹² Notice at ¶ 31.

¹³ *Domestic Fixed-Satellite Service: Transponder Sales*, 90 FCC 2d 1238 (1982).

INTELSAT capacity to be used for domestic services unless the current INTELSAT television capacity shortage is resolved. Finally, HBO observes that certain proposals may adversely encourage the piracy of programming services outside the territories where the distributors are authorized to sell.

Respectfully submitted,

**HOME BOX OFFICE, a Division of Time
Warner Entertainment Company, L.P.**

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